



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 5, 2002

Mr. Robert L. Lovitt  
Senior Vice President for Business Affairs  
The University of Texas at Dallas  
P.O. Box 830688  
Richardson, Texas 75083-0688

OR2002-6944

Dear Mr. Lovitt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172461.

The University of Texas at Dallas (the "university") received a request for "the list of books requested for all courses for the Summer 2002 and Fall 2002 semesters." You claim that the requested information is not "public information" for purposes of the Public Information Act ("the Act"), or that alternatively, this information is excepted from disclosure under section 552.110 of the Government Code. Furthermore, you state that you have notified Barnes and Noble College Bookstores, Inc. ("B&N"), a third party whose proprietary interests may be implicated by the request, of the request for information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered all submitted arguments and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We will first address whether the submitted information is considered public information. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." You state that the university does not compile or maintain the requested list. The Act does not

ordinarily require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986), 317 (1982). However, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision Nos. 445 (1986), 437 (1986) (overruled by Open Records Decision No. 585 (1991) to the extent it suggests that governmental body can waive its right of access to information gathered on behalf of governmental body).

B&N argues that it "does not believe that [the university] has the right to access [B&N's] course book selection forms, [l]ists or related records." Further, you argue that the university "does not have a contractual right to demand that [B&N] turn over its list to the [university]." You have submitted a copy of the university's contract (the "contract") with B&N. You explain that, under Article D of Exhibit A to the contract, B&N is responsible for the selection and ordering of textbooks by university faculty members. You further state that, under Article N(1) of Exhibit A to the contract, the university has specifically reserved the right to review and inspect B&N's accounting records. You argue that a comparison of Article N(1) to Article D confirms that the university has no contractual right of access to the requested list. We note, however, that section 10(i) of the contract provides that B&N "agrees that all reports, studies, plans, models, drawing, specifications, and *any other information or data of any type* relating to its activities hereunder, . . . , shall remain the property of the [u]niversity." (Emphasis added). The requestor argues that, based on this provision, the university has ownership of the booklist and, therefore, the booklist constitutes public information under the Act.

B&N argues, however, that even if the university owns or has a right of access to the requested information, the requested information was not created or maintained for, or on behalf of, the university. The bookstore does not appear to prepare the list on behalf of the university. Further, we are unable to determine that B&N, by compiling and maintaining a complete booklist, is performing a task that otherwise would have been performed by the university. As it appears that the requested booklist is created and maintained by B&N for its own purposes, we agree that the booklist was not created or maintained for the university. *See* Open Records Decision No. 558 (1990)(information must be prepared for governmental body). Accordingly, we conclude that the requested information does not constitute public information under section 552.002 of the Government Code and is therefore not subject to release under the Act. As we are able to make this determination, we need not address the remaining arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen A. Eckerle". The signature is fluid and cursive, with the first name "Karen" being more prominent.

Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 172461

c: Mr. Stuart Johnston  
344 Kyle Drive  
Coppell, Texas 75019

Ms. Suzanne M. Berger  
Bryan, Cave, Robinson, Silverman  
1290 Avenue of the Americas  
New York, New York 10104-3300